

**REMARKS**

Claims 1, 10, 15, and 18 have been amended. Claims 1 through 20 remain in the application.

Claims 9, 13, 14, and 19 have been allowed.

Claim 18 was provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 09/982,619. Applicant respectfully traverses this rejection.

As to claim 18 of the present application, claim 18, as amended, clarifies the invention claimed as a trailer hitch cover assembly including a main body for connection to a trailer hitch tube on a motor vehicle and having a front face with an opening adapted to allow passage of a trailer hitch into an open end of the hitch tube. The main body has opposed side walls extending from the front face. The trailer hitch cover assembly also includes a movable cover plate hingedly connected to the main body to be moved between a first position and a second position for closing and opening the open end. The main body includes a plurality of apertures extending laterally through the sidewalls.

As to co-pending Application No. 09/982,619, claim 1 claims a trailer hitch cover assembly including a hitch insert having a first aperture extending longitudinally therethrough. The hitch insert is adapted to fit over a hitch tube on a motor vehicle. A rotatable door is connected to the hitch insert for closing and opening the first aperture at a longitudinal end of the hitch insert.

The double-patenting doctrine precludes one person from obtaining more than one valid patent for the same invention or an obvious modification of an invention. Double patenting is concerned with attempts to claim the same or related subject matter twice. Thus, the standard for comparison for the second patent is what was *claimed* in the first patent, not what was

*disclosed* in the specification of the first patent. “In general, a rejection on grounds of double patenting relies upon an analysis similar to the obviousness analysis relevant to a rejection pursuant to §§ 102(e) and 103; the key difference is that a double-patenting rejection looks solely to the claims of the prior art reference, and not to the entire disclosure of the prior art reference, as the basis for comparison. . . . A rejection for obviousness must be based on a comparison of the invention to the entirety of the disclosure in the prior art reference, whereas an obviousness-type double-patenting rejection must be grounded on a comparison of the invention to the claims, and only the claims, of the prior art reference.” Purdue Pharma L.P. v. Boehringer Ingelheim GmbH, 98 F.Supp.2d 362, 392, 55 U.S.P.Q.2d 1168, 1190 (S.D. N.Y. 2000), *aff’d*, 237 F.3d 1359, 57 U.S.P.Q.2d 1647 (Fed. Cir. 2001).

None of the references cited, either alone or in combination with each other, render obvious the claimed invention of claim 18 under the judicially created doctrine of obviousness-type double patenting. Claim 1 of copending Application No. 09/982,619 is claiming a trailer hitch cover assembly including a hitch insert is adapted to fit over a hitch tube on a motor vehicle. The hitch insert has a first aperture extending longitudinally therethrough. A rotatable door is connected to the hitch insert for closing and opening the first aperture at a longitudinal end of the hitch insert.

Claim 18 of the present application does not claim these features. Further, claim 18 of the present application claims a trailer hitch cover assembly including a main body for connection to a trailer hitch tube on a motor vehicle and having a front face with an opening adapted to allow passage of a trailer hitch into an open end of the hitch tube. The main body has opposed side walls extending from the front face. The trailer hitch cover assembly includes a movable cover plate hingedly connected to the main body to be moved between a first position and a second position for closing and opening the open end. Further, the main body includes a

plurality of apertures extending laterally through the sidewalls. Claim 1 of co-pending Application No. 09/982,619 does not claim these features. Therefore, it is respectfully submitted that claim 18 of the present invention is allowable over the judicially created doctrine of obviousness-type double patenting.

Claims 1, 12, and 20 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,176,506 to Blake in view of U.S. Patent No. 4,730,841 to Ponder. Applicant respectfully traverses this rejection.

Although Applicant respectfully disagrees with the rejection, to further prosecution of the application, Applicant has previously filed a Terminal Disclaimer to overcome the rejection, a copy of which is attached to this Amendment. Therefore, it is respectfully submitted that claims 1, 12, and 20 are allowable over the rejection under the judicially created doctrine of obviousness-type double patenting.

Claims 1, 3 through 5, 8, 10, 11, 15, and 18 were rejected under 35 U.S.C. § 102(b) as being anticipated by Morelock (U.S. Patent No. 6,019,386). Applicant respectfully traverses this rejection.

U.S. Patent No. 6,019,386 to Morelock discloses a protective cover for a trailer hitch. A protective cover 10 is used in conjunction with a receiver hitch 12 and an electrical component such as a flat plug 14. The protective cover 10 is generally formed of a housing 16 that includes a removable flexible frame 18 and a jacket 20. The jacket 20 is coupled to the flexible frame 18 by a living hinge 22. The flexible frame 18 also provides additional housing 24 for supporting a flat plug 14 within a seat 26. The jacket 20 is intended to fit over the open end 28 of receiver hitch 12 and lock in place around housing 24 by a latch 30. The jacket 20 is also provided with an interior frame 32 and an exterior frame 34 for closing about open end 28 of

receiver hitch 12. Jacket 20, as shown in FIG. 3, is in an open position and rotated upwardly about living hinge 22. Interior frame 32 extends annularly within the interior 44 of jacket 20. As shown in conjunction with FIG. 4, interior frame 32 preferably has a perimeter 46 that is equal to or less than the perimeter 48 of passageway 40 of receiver hitch 12. Morelock '386 does not disclose a trailer hitch cover assembly having a main body having an aperture adapted to fit over a trailer hitch tube on a motor vehicle and an insulating member adapted to be disposed over the hitch tube and between the main body and the hitch tube such that the main body overlaps the insulating member.

In contradistinction, claim 1, as amended, clarifies the invention claimed as a trailer hitch cover assembly including a main body having an aperture adapted to fit over a trailer hitch tube on a motor vehicle and to allow insertion of a trailer hitch into the hitch tube. The trailer hitch cover assembly also includes an insulating member adapted to be disposed over the hitch tube and between the main body and the hitch tube such that the main body overlaps the insulating member. The trailer hitch cover assembly further includes a rotatable cover plate connected to the main body and being movable between a closed position and an open position for closing and opening the aperture.

A rejection grounded on anticipation under 35 U.S.C. § 102 is proper only where the subject matter claimed is identically disclosed or described in a reference. In other words, anticipation requires the presence of a single prior art reference which discloses each and every element of the claimed invention arranged as in the claim. In re Arkley, 455 F.2d 586, 172 U.S.P.Q. 524 (C.C.P.A. 1972); Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 218 U.S.P.Q. 781 (Fed. Cir. 1983); Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 U.S.P.Q. 481 (Fed. Cir. 1984).

Morelock '386 does not disclose or anticipate the claimed invention of claim 1. Specifically, Morelock '386 merely discloses a protective cover for a trailer hitch having a removable flexible frame and a jacket. Morelock '386 lacks a trailer hitch cover assembly having a main body having an aperture adapted to fit over a trailer hitch tube on a motor vehicle and an insulating member adapted to be disposed over the hitch tube and between the main body and the hitch tube such that the main body overlaps the insulating member. In Morelock '386, the exterior frame 34 is not an insulating member and, even if somehow it is construed to be an insulating member, the flexible frame 18 does not overlap the exterior frame 34. Morelock '386 fails to disclose the combination of a trailer hitch cover assembly including a main body adapted to be disposed over a trailer hitch tube on a motor vehicle and adapted to allow insertion of a trailer hitch into the hitch tube, an insulating member adapted to be disposed over the hitch tube and between the main body and the hitch tube such that the main body overlaps the insulating member, and a cover plate hingedly connected to the main body and being movable between a closed position and an open position as claimed by Applicant. Morelock '386 fails to anticipate claim 1. Therefore, it is respectfully submitted that claim 1 and the claims dependent therefrom are allowable over the rejection under 35 U.S.C. § 102(b).

As to claim 10, claim 10, as amended, clarifies the invention claimed as a trailer hitch cover assembly including a main body having an aperture adapted to fit over a hitch tube and adapted to allow insertion of a hitch into the hitch tube. The trailer hitch cover assembly also includes an insulating member adapted to be disposed over the hitch tube and between the main body and the hitch tube such that the main body overlaps the insulating member. The trailer hitch cover assembly further includes a rotatable cover plate connected to the main body and being movable between a closed position and an open position for closing and opening the

aperture. The insulating member further comprises a front face having an opening adapted to allow passage of the hitch into the open end of the hitch tube.

Morelock '386 does not disclose or anticipate the claimed invention of claim 10. Specifically, Morelock '386 merely discloses a protective cover for a trailer hitch having a removable flexible frame and a jacket. Morelock '386 lacks a trailer hitch cover assembly having an insulating member adapted to be disposed over a hitch tube and between a main body and the hitch tube such that the main body overlaps the insulating member, wherein the insulating member comprises a front face having an opening adapted to allow passage of the hitch into the open end of the hitch tube. In Morelock '386, the exterior frame 34 is not an insulating member and, even if somehow it is construed to be an insulating member, the flexible frame 18 does not overlap the exterior frame 34. Morelock '386 fails to disclose the combination of a trailer hitch cover assembly including a main body having an aperture adapted to fit over a hitch tube and adapted to allow insertion of a hitch into the hitch tube, an insulating member adapted to be disposed over the hitch tube and between the main body and the hitch tube such that the main body overlaps the insulating member, and a rotatable cover plate connected to the main body and being movable between a closed position and an open position for closing and opening the aperture, wherein the insulating member further comprises a front face having an opening adapted to allow passage of the hitch into the open end of the hitch tube as claimed by Applicant. Morelock '386 fails to anticipate claim 10. Therefore, it is respectfully submitted that claim 10 and the claims dependent therefrom are allowable over the rejection under 35 U.S.C. § 102(b).

As to claim 15, claim 15, as amended, clarifies the invention claimed as a trailer hitch cover assembly including a main body having a front face and an opening adapted to fit over a hitch tube and to allow passage of a hitch into an open end of the hitch tube. The trailer hitch cover assembly also includes a movable cover connected to the main body to be moved

between a first position and a second position for closing and opening the open end of the hitch tube. The main body includes at least one first hinge knuckle to allow the movable cover to be separated from and connected to the main body.

Morelock '386 does not disclose or anticipate the claimed invention of claim 15. Specifically, Morelock '386 merely discloses a protective cover for a trailer hitch having a removable flexible frame and a jacket. Morelock '386 lacks a trailer hitch cover assembly having a main body having a front face and an opening adapted to fit over a hitch tube and to allow passage of a hitch into an open end of the hitch tube and the main body including at least one first hinge knuckle to allow a movable cover to be separated from and connected to the main body. In Morelock '386, the jacket 20 is integral and unitary with the flexible frame 18 via the living hinge 22 and the flexible frame 18 does not have a hinge knuckle to allow the movable jacket 20 to be separated from and connected to the flexible frame 18. Morelock '386 fails to disclose the combination of a trailer hitch cover assembly including a main body having a front face and an opening adapted to fit over a hitch tube and to allow passage of a hitch into an open end of the hitch tube and a movable cover connected to the main body to be moved between a first position and a second position for closing and opening the open end of the hitch tube, wherein the main body includes at least one first hinge knuckle to allow the movable cover to be separated from and connected to the main body as claimed by Applicant. Morelock '386 fails to anticipate claim 15. Therefore, it is respectfully submitted that claim 15 and the claims dependent therefrom are allowable over the rejection under 35 U.S.C. § 102(b).

As to claim 18, claim 18, as amended, clarifies the invention claimed as a trailer hitch cover assembly including a main body for connection to a trailer hitch tube on a motor vehicle and having a front face with an opening adapted to allow passage of a trailer hitch into an open end of the hitch tube and opposed side walls extending from the front face. The hitch cover

assembly also includes a movable cover plate hingedly connected to the main body to be moved between a first position and a second position for closing and opening the open end. The main body includes a plurality of apertures extending laterally through the sidewalls.

Morelock '386 does not disclose or anticipate the claimed invention of claim 18. Specifically, Morelock '386 merely discloses a protective cover for a trailer hitch having a removable flexible frame and a jacket. Morelock '386 lacks a trailer hitch cover assembly having a main body for connection to a trailer hitch tube on a motor vehicle and having a front face with an opening adapted to allow passage of a trailer hitch into an open end of the hitch tube and a plurality of apertures extending laterally through sidewalls of the main body. In Morelock '386, the alleged holes for the flat plug 14 and the finger 58 do not extend laterally through side walls of the flexible frame 18. As such, Morelock '386 fails to disclose the combination of a trailer hitch cover assembly including a main body for connection to a trailer hitch tube on a motor vehicle and having a front face with an opening adapted to allow passage of a trailer hitch into an open end of the hitch tube and a movable cover plate hingedly connected to the main body to be moved between a first position and a second position for closing and opening the open end with the main body including a plurality of apertures extending laterally through the sidewalls as claimed by Applicant. Therefore, it is respectfully submitted that claim 18 is allowable over the rejection under 35 U.S.C. § 102(b).

Claims 6, 7, 16, and 17 were rejected under 35 U.S.C. § 103 as being unpatentable over Morelock '386 in view of Ponder (U.S. Patent No. 4,730,841). Applicant respectfully traverses this rejection for the same reasons given above to claims 1 and 15.

Claim 2 was rejected under 35 U.S.C. § 103 as being unpatentable over Morelock '386 in view of Vo et al. (U.S. Patent No. 6,053,627). Applicant respectfully traverses this rejection.



U.S. Patent No. 6,053,627 to Vo et al. discloses a lighted modular trailer hitching socket covering system and method of use. A hitching socket mating tongue element (TE) has an auxiliary base plate (ABP) attached thereto. The trailer hitching socket mating tongue element (TE) has securing holes (SC) therein. Also shown are gripping holes (GH) on two sides opposed thereof. FIG. 2b shows an auxiliary base plate (ie. cradling mounting bracket) (APB') with mating grips (G) present therein. The grips (G) snap into the auxiliary base plate mounting bracket (APB') gripping holes (GH). Vo et al. does not disclose a trailer hitch cover assembly including a main body having an aperture adapted fit over a trailer hitch tube on a motor vehicle and to allow insertion of a trailer hitch into the hitch tube.

As to claim 2, claim 2 claims the present invention as a trailer hitch cover assembly including a main body having an open portion adapted to fit over a trailer hitch tube on a motor vehicle and to allow insertion of a trailer hitch into an open end of the hitch tube. The trailer hitch cover assembly also includes a cover hingedly connected to the main body and being movable between a closed position and an open position for opening and closing the open end. The main body includes at least one deflectable tab to retain the main body on the hitch tube.

The United States Court of Appeals for the Federal Circuit (CAFC) has stated in determining the propriety of a rejection under 35 U.S.C. § 103, it is well settled that the obviousness of an invention cannot be established by combining the teachings of the prior art absent some teaching, suggestion or incentive supporting the combination. See In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 227 U.S.P.Q. 657 (Fed. Cir. 1985); ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 221 U.S.P.Q. 929 (Fed. Cir. 1984). The law followed by our court of review and the Board of Patent Appeals and Interferences is that “[a] prima facie case of obviousness is established when the teachings from the prior art itself would appear to have

suggested the claimed subject matter to a person of ordinary skill in the art.” In re Rinehart, 531 F.2d 1048, 1051, 189 U.S.P.Q. 143, 147 (C.C.P.A. 1976). See also In re Lalu, 747 F.2d 703, 705, 223 U.S.P.Q. 1257, 1258 (Fed. Cir. 1984) (“In determining whether a case of prima facie obviousness exists, it is necessary to ascertain whether the prior art teachings would appear to be sufficient to one of ordinary skill in the art to suggest making the claimed substitution or other modification.”)

None of the references cited, either alone or in combination with each other, teach or suggest the claimed invention of claim 2. Specifically, Morelock ‘386 merely discloses a protective cover for a trailer hitch having a removable flexible frame and a jacket. Morelock ‘386 lacks a trailer hitch cover assembly including a main body having an open portion adapted to fit over a trailer hitch tube on a motor vehicle and to allow insertion of a trailer hitch into an open end of the hitch tube, wherein the main body includes at least one deflectable tab to retain the main body on the hitch tube. In Morelock ‘386, the flexible frame 18 does not have at least one deflection tab.

Vo et al. ‘627 merely discloses a lighted modular trailer hitching socket covering system and method of use in which an auxiliary base plate mounting bracket has gripping holes on two sides opposed thereof and an auxiliary base plate with mating grips snap into the auxiliary base plate mounting bracket gripping holes. Vo et al. does not disclose a trailer hitch cover assembly including a main body having an aperture adapted fit over a trailer hitch tube on a motor vehicle and to allow insertion of a trailer hitch into the hitch tube. In Vo et al. ‘627, the tongue element (TE) fits within a hitch tube as a covering device so that the auxiliary base plate (ABP’) of a decorative lighted display element such as a football (FB) or a baseball (BB) may be attached to the tongue element (TE) by mating grips (G). Further, a trailer hitch cannot be inserted into the hitch tube when the Vo et al. ‘627 tongue element (TE) is in place. As such,

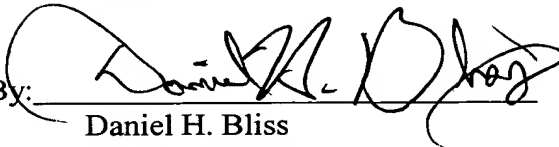
there is no suggestion or motivation in the art to combine Morelock '386 and Vo et al. '627 together.

The references, if combinable, fail to teach or suggest the combination of a trailer hitch cover assembly including a main body having an open portion adapted to fit over a trailer hitch tube on a motor vehicle and to allow insertion of a trailer hitch into an open end of the hitch tube and a cover hingedly connected to the main body and being movable between a closed position and an open position for opening and closing the open end, the main body including at least one deflectable tab to retain the main body on the hitch tube as claimed by Applicant. The claimed invention is novel and unobvious because the trailer hitch cover assembly provides a hinged cover that may be both readily opened for receiving a hitch and may be closed to protect the hitch tube. Therefore, it is respectfully submitted that claim 2 is allowable over the rejection under 35 U.S.C. § 103.

Obviousness under § 103 is a legal conclusion based on factual evidence (In re Fine, 837 F.2d 1071, 1073, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988), and the subjective opinion of the Examiner as to what is or is not obvious, without evidence in support thereof, does not suffice. Since the Examiner has not provided a sufficient factual basis, which is supportive of his/her position (see In re Warner, 379 F.2d 1011, 1017, 154 U.S.P.Q. 173, 178 (C.C.P.A. 1967), cert. denied, 389 U.S. 1057 (1968)), the rejections of claims 2, 6, 7, 16, and 17 are improper. Therefore, it is respectfully submitted that claims 2, 6, 7, 16, and 17 are allowable over the rejections under 35 U.S.C. § 103.

Based on the above, it is respectfully submitted that the claims are in a condition for allowance, which allowance is solicited.

Respectfully submitted,

By: 

Daniel H. Bliss

Reg. No. 32,398

BLISS McGLYNN, P.C.  
2075 West Big Beaver Road, Suite 600  
Troy, Michigan 48084  
(248) 649-6090

Date: October 25, 2004

Attorney Docket No.: 0290.00004